



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2005 AUG -4 AM 8:41

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF:

Action Target Inc.  
1281 West 220 North  
Provo, Utah 84601-2448

Respondent

COMBINED COMPLAINT  
AND CONSENT AGREEMENT

Docket No. EPCRA-08-2005-0003

United States Environmental Protection Agency, Region 8 ("EPA" or "Complainant"),  
and Action Target Inc. ("Respondent"), by their undersigned representatives, hereby consent and  
agree as follows:

**PRELIMINARY STATEMENT**

1. This matter is subject to 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement ("Consent Agreement") is entered into by the parties for the purpose of simultaneously commencing and amicably concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045. The supervisors in the Legal Enforcement Program and the Technical Enforcement Program within the Office of Enforcement, Compliance and Environmental Justice, Region 8, EPA, have been duly authorized to institute this action.

3. Respondent stipulates to EPA's jurisdiction and venue over the matters contained in this Consent Agreement.
4. EPA and Respondent agree that settlement of this matter is in the public interest, and EPA and Respondent agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
5. This Consent Agreement contains all terms of the settlement agreed to by the parties.

#### **GENERAL ALLEGATIONS**

6. Respondent was incorporated on May 30, 1986 and therefore is a "person" as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
7. Respondent is an owner or operator of a "facility" as that term is defined in section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and which is located at 1281 West 220 North, Provo, Utah.
8. On June 29, 2004, Mr. William E. Moore, an authorized and properly credentialed EPA inspector, inspected Respondent's facility in Provo, Utah.
9. Respondent consented to EPA's inspection conducted on June 29, 2004, at Respondent's facility.
10. At all times relevant to this matter, the facility processed a "toxic chemical" as defined in section 329(10) of EPCRA, 42 U.S.C. § 11049(10).

### ALLEGED VIOLATIONS

#### **Failure to Submit the Form R for xylene to the EPA Reporting Center and to the Utah SERC as required under section 313 of EPCRA for calendar years 2002 and 2003.**

11. Pursuant to sections 313 and 328 of EPCRA, 42 U.S.C. § 11023 and § 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372. Section 313(b) of EPCRA, 40 C.F.R. § 372.22, addresses owners and operators of facilities that have 10 or more full-time employees, are in Standard Industrial Classification Codes 20 through 39, and manufactured, processed, or otherwise used a toxic chemical listed under section 313(c) of EPCRA, 40 C.F.R. § 372.65, in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25. Under section 313(b) of EPCRA, owners and operators are required to annually submit a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter "Form R or Form A"), for each toxic chemical listed under section 313(c) of EPCRA, 40 C.F.R. § 372.65, that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds.

12. Respondent's facility has 10 or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

13. Respondent's facility is in Standard Industrial Classification Code 3441.

14. The chemical xylene, CAS #130-20-7, is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to 40 C.F.R. § 372.22, if it is manufactured, processed, or otherwise used in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25.

15. Pursuant to 40 C.F.R. § 372.25, the appropriate reporting threshold for a toxic chemical processed is 25,000 pounds.

16. In calendar years 2002 and 2003, the toxic chemical xylene was processed at Respondent's facility in excess of 25,000 pounds annually. Respondent was therefore required to submit annually to the Administrator of EPA and to the State of Utah a Form R for this chemical on or before July 1, 2003 and July 1, 2004, respectively.

17. Respondent failed to submit a Form R or Form A annually to the Administrator and to the State of Utah on or before July 1 for the xylene processed during the calendar years 2002 and 2003.

18. Respondent violated the requirements of the reporting under section 313 of EPCRA, 42 U.S.C. § 11023.

19. Respondent neither admits or denies EPA's specific factual allegations contained herein.

### **TERMS OF SETTLEMENT**

#### **Civil Penalty**

20. Respondent has achieved compliance with the requirements that formed the basis of the alleged violation in the Complaint by, inter alia, submitting a Form R to the Administrator and to the State of Utah for the calendar years 2002 and 2003 on approximately November 26, 2004.

21. Pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and based in part on the nature of the alleged violation and other statutory factors, EPA agrees that an appropriate civil penalty to settle this action is Five Thousand Six Hundred and Forty-Eight Dollars (\$5,648).

22. Respondent consents and EPA agrees, for the purpose of final settlement, to the issuance of a final consent order and the payment of the civil penalty cited in the foregoing paragraph.

Respondent also consents, for the purpose of settlement, to the performance of the SEP described below.

23. Respondent agrees and acknowledges that all payments made as a part of this agreement do not qualify for any kind of favorable tax treatment.

24. Within thirty days (30) of receiving a signed final consent order in this matter, Respondent shall remit a cashier's or certified check for the amount specified in paragraph 21 above. Respondent shall make its check payable to "Treasurer, United States of America," and mail it to:

Mellon Bank  
EPA Region 8  
(Regional Hearing Clerk)  
P. O. Box 360859M  
Pittsburgh, PA 15251

The check shall reference Respondent's name and facility address, the EPA Docket Number of this action. A copy of the check shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 8  
999 18th Street, Suite 300  
Denver, Co 80202-2466

and

David Cobb  
Technical Enforcement Program, 8ENF-AT  
U.S. Environmental Protection Agency, Region 8  
999 18th Street, Suite 300  
Denver, Co 80202-2466

25. In the event Respondent fails to pay or does not pay the full amount of its civil penalty by the due date, Respondent shall pay interest and late charges as specified in paragraph 36 below.

### **SUPPLEMENTAL ENVIRONMENTAL PROJECT ("SEP")**

26. Respondent voluntarily agrees that it shall undertake a SEP which is intended for the purpose of securing significant environmental protection and to promote emergency preparedness capabilities at the state level. Namely, the SEP involves the purchase of six (6) Dell Latitude D610 Series laptop computers for the Utah Division of Emergency Services and Homeland Security (DESHS) with the specifications set forth in exhibit 1. This equipment will allow Utah DESHS access to critical geographical information, chemical databases, and incident status information during an emergency incident. These laptops will also assist with emergency planning and response coordination efforts with federal, state, and regional responders during multi-jurisdictional incidents. The estimated cost of the SEP is Sixteen Thousand and Twelve Dollars (\$16,012).

27. Respondent shall expend at least Sixteen Thousand and Twelve Dollars (\$16,012) on the SEP. Respondent shall provide Complainant with documentation of the expenditures made in connection with the SEP as part of the completion report.

28. Respondent shall purchase the six (6) laptop computers and deliver them to the Utah DESHS not more than sixty (60) days from the date of the final consent order in this matter unless the parties agree in writing to an extension of the completion date.

29. Respondent, by executing this Consent Agreement, certifies that it is not under any legal obligation, other than this Agreement, to perform or develop the SEP nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with any state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

30. Respondent shall submit a SEP Completion Report to EPA within 30 days of the completion of the SEP project. The SEP Completion Report shall contain, at a minimum, the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders and receipts and cancelled checks;
- (iii) Certification that the SEP has been fully implemented pursuant to the provisions of this agreement; and,

Respondent agrees that failure to submit the SEP Completion Report is a violation of this Agreement resulting in Respondent being liable for stipulated penalties pursuant to Paragraph 34 below.

31. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all reports submitted to EPA pursuant to this Agreement. Respondent shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Agreement, Respondent shall, by an officer of Respondent's, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

*I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that*



*there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

32. EPA acceptance of SEP Reports:

a. Following receipt of the SEP Completion Report described in Paragraph 30 above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report with notification to Respondent, in writing, of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with paragraph 34 below.

b. If EPA elects to exercise option (ii) above, EPA will permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's notification of objection to reach agreement. If agreement between the Parties cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of EPA's decision to Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of such deficiency or failure to comply with the terms of this Consent Agreement.

33. The determination as to whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

### **STIPULATED PENALTIES AND LATE FEES**

34. In the event that Respondent fails to materially comply with any of the terms or provisions of this Agreement relating to the performance of the SEP or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 26 above, Respondent shall be liable for stipulated penalties as provided below.

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraphs 26, 27 and 28, Respondent shall pay a stipulated penalty to the United States in the amount of Sixteen Thousand and Twelve Dollars (\$16,012) less amounts expended in good faith to complete the SEP.
- (ii) If the SEP is not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalties.
- (iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of Sixteen Thousand and Twelve Dollars (\$16,012) less the amount already expended within thirty (30) days of written demand by EPA.

- (iv) If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalties.
- (v) For failure to submit a SEP Completion Report as required by paragraph 30 above, Respondent shall pay a stipulated penalty in the amount of Fifty dollars (\$50.00) for each day after the due date that the report is submitted.

35. Stipulated penalties for subparagraph 34(v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 24. Interest and late charges shall be paid as stated in paragraph 36. Nothing in this Agreement shall be construed as prohibiting, altering or in any way limiting EPA's ability to seek any other remedies or sanctions available to EPA by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.

36. Interest on the civil penalty amount shall accrue from the date of the receipt of the signed final consent order at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Interest on the stipulated penalty amount shall begin to accrue 31 days after Respondent's receipt of EPA's demand for such penalties. A late payment charge of twenty dollars (\$20.00) shall be imposed after the first thirty (30) days that the payment, or any portion thereof, is overdue,

with an additional charge of ten dollars (\$10.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid within 90 days.

### **GENERAL PROVISIONS**

37. Respondent waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and knowingly agrees to waive its right to a hearing on this matter under Section 325(b)(B) of EPCRA, 42 U.S.C. § 11045(b)(B), and to appeal this matter under EPCRA § 325(f), 42 U.S.C. § 11045(f).

38. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

39. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

40. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

41. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
42. Any written public statement made by Respondent regarding the SEP required by this Agreement shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Emergency Planning and Community Right-to-Know Act."
43. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.
44. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
45. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the alleged violations set forth in this Consent Agreement.
46. This Consent Agreement resolves Respondent's liability for Federal civil penalties under section 325 of EPCRA, 42 U.S.C. § 11045, for the alleged violations and facts contained in this Consent Agreement.
47. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.

#### **EFFECTIVE DATE**

48. This Consent Agreement shall become effective upon filing with the Regional Judicial Officer.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Date: 7/27/05

By: Elisabeth Evans  
for Martin Hestmark, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 8/2/05

By: David Janik  
Michael T. Risner, Director  
David Janik, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 8/1/05

By: Richard H. Baird  
Richard Baird (303-312-6642)  
Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 7/21/05

**ACTION TARGET INC.**  
By: Tom Wright  
Tom Wright  
General Manager, Action Target Inc.

Exhibit 1: SEP Proposal with computer specifications

## EXHIBIT 1

**-- Supplemental Environmental Project (SEP) Proposal --****1. Facility**

Action Target Inc

**2. Facility Address**

1281 W 220 N

Provo, UT 84601-2448

**3. SEP Summary**

As part of an enforcement action, Action Target Inc agrees to purchase six (6) Dell Latitude D6xx Series laptop computers for the Utah Division of Emergency Services and Homeland Security. This equipment will enable this organization to collect information, provide emergency management personnel access to this information, and better coordinate response efforts during multi-jurisdictional incident responses.

Action Target Inc has calculated the total cost of this SEP to be \$16,012.53 (6 laptops @ \$2,668.75/laptop) Therefore Action Target agrees to spend at least \$15,000 on this SEP.

I understand that this proposal qualifies as a 'one-to-one' transaction meaning that the total purchase price of the laptop computers will satisfy the same dollar amount of imposed penalty.

**4. SEP Details**

- Six (6) Dell Latitude D6xx Series Laptops

**Laptop Specifications:**

- Liquid Crystal Display
- Pentium M Processor (2 GHz)
- 2 GB Memory
- 80 GB Hard Drive
- Floppy Drive (On board, swappable, or external)
- 802.11
- Modem
- Ethernet
- 8x DVD read/write Drive
- Port Replicator/Docking
- Spare Battery
- USB Mouse
- Windows XP OS
- MS Office XP

**5. Authorizing Official**

Tom Wright, Production Manager

**6. Date**June 15<sup>th</sup> 2005

**LOAN No. 501 - 007521665 - 001**  
**DATE: JUNE 17, 2005 11:49:57 AM**

### Attachment A

Attached hereto and made a part hereof Loan No.: 501 - 007521665 - 001 between Lender and ACTION TARGET INC as Borrower.

Product Location	General Product Description/Quantity	
1281 W 220 N PROVO UT 84601	Dell Order #435999471	
	<b>Description</b>	<b>Quantity</b>
	Latitude D610, Pentium M 760 (2.00GHz) 14.1 XGA, Intel Extreme, English	6
	2.0GB, Double Data Rate 2-533 SDRAM, 2 Dimm, for Dell Latitude D, Factory Install	6
	80GB Hard Drive 9.5MM, 5400RPMfor Dell Latitude D610 Factory Install	6
	Floppy Drive,Internal/Externalfor Dell Latitude D-Family, Notebooks, Factory Tied	6
	Windows XP Professional, SP2 with media, for Latitude English, Factory Installed	6
	Dell USB 2 Button Optical Mouse with Scroll for LatitudeNotebooks, Tied	6
	Internal 56K Modem for Dell Latitude D-Family Notebooks Factory Install	6
	65W AC Adapter for Latitude D-Family	6
	8X DVD+/-RW for Latitude D Family, Factory Tied	6
	Dell Wireless 1370 WLAN (802.11b/g,54Mbps) miniPCI Card, Latitude, US, Factory Install	6
	Resource CD for Latitude D610	6
	6-Cell/53 WHr Primary Battery for Dell all Latitude D500/D600, Factory Install	6
	Readyware Installation Fee	6
	NTFS File System, Factory Install	6
	Norton Internet Security, 15 Month, Latitude, English	6
	Reference Guide for Latitude D610, Factory Tied	6
	Readyware Installation Fee	6
	Adobe Acrobat 6 Standard Rtl Package, English, CD W/Docs, Factory Installed, Bundle w/Office	6
	Microsoft Office 2003 Small Business Edition for Latitude	6
	Type 7 Contract - Mail-In Service, 24x7 Technical Support, Initial Year	6
	Type 7 Contract - Mail-In Service, 24x7 Technical Support, 2YR Extended	6
	Standard On-Site Installation Declined	6
	D/Port, Port Replicator for Latitude D-Family, Factory Tied	6
	6-Cell/53WHr Primary Battery for Dell Latitude D600/D500 Notebooks, Factory Tied	6
	Purchase is NOT intended for resell	6
	Special Pricing Applied	6

All other terms and conditions of the Loan shall remain unchanged.



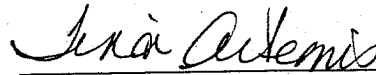
## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT CONSENT AGREEMENT/FINAL ORDER** in the matter **ACTION TARGET INC., DOCKET NO.: EPCRA-08-2005-0003** was filed with the Regional Hearing Clerk on August 4, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Richard Baird, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on August 4, 2005, to:

Tom Wright  
General Manager  
Action Target  
1281 W. 220 N  
Provo, UT 84601-2448

August 4, 2005



Tina Artemis  
Regional Hearing Clerk



Printed on Recycled Paper